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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

08-CR-206-BR

Plaintiff,

ORDER

v.

Portland Division

MICHAELA RENEE DUTSON and TONY
DUTSON,

Defendants.

BROWN, Judge.

This matter comes before the Court on the government's unopposed Motion (#140) for Judicial Notice that the IRS is an Agency of the United States. Counsel for each Defendant has reported they do not plan to file a response to the Motion. For the reasons that follow, the Court **GRANTS** the government's Motion.

Federal Rule of Evidence 201 specifies when courts may and must take judicial notice of adjudicative facts and provides:

(b) **Kinds of facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Rule 201 also provides: "A court may take judicial notice, whether requested or not[, and] . . . [a] court shall take judicial notice if requested by a party and supplied with the necessary information." Fed. R. Evid. 201[©] and (d).

Internal Revenue Code (IRC) 26 U.S.C. § 7801(a) provides the administration and enforcement of the IRC "shall be performed by or under the supervision of the Secretary of the Treasury." In addition, 26 U.S.C. § 7803(a) provides for the appointment of a Commissioner of Internal Revenue in the Department of the Treasury who "shall have such duties and powers as may be prescribed by the Secretary of the Treasury," including the power to "administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws."

Finally, Department of the Treasury Regulation 26 C.F.R.

§ 601.101(a) provides in pertinent part:

The Internal Revenue Service is a bureau of the Department of the Treasury under the immediate direction of the Commissioner of Internal Revenue. The Commissioner has general superintendence of the assessment and collection of all taxes imposed by any law providing internal revenue. The Internal Revenue Service is the agency by which these functions are performed.

The Supreme Court has noted "the Internal Revenue Service is organized to carry out the broad responsibilities of the Secretary of the Treasury under section 7801(a) of the [Internal Revenue] Code for the administrative and enforcement of the internal revenue laws." *Donaldson v. United States*, 400 U.S. 517, 534 (1971). Moreover, the Tenth Circuit has held: "[T]he IRS is an agency of the United States government and, of course, a conspiracy to defraud that agency necessarily constitutes a conspiracy to defraud the United States." *United States v. Scott*, 37 F.3d 1564, 1584 (10th Cir. 1994). See also *McNeil v. United States*, 78 Fed. Cl. 211, 221 (2007) ("[T]he IRS is an agency of the United States government.").

Based on the foregoing, the Court concludes the fact that the IRS is an agency of the United States government is both "generally known within the territorial jurisdiction of the trial court" and "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned" including by reference to publicly available statutes, regulations, and judicial decisions. See Fed. R. Evid. 201(a). The Court, therefore, takes judicial notice of that fact.

CONCLUSION

For these reasons, the Court **GRANTS** the government's unopposed Motion (#140) for Judicial Notice that the IRS is an

Agency of the United States.

IT IS SO ORDERED.

DATED this 28th day of January, 2010.

A handwritten signature in black ink, appearing to read "Anna J. Brown", is written over a horizontal line.

ANNA J. BROWN
United States District